

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H204976

LYNA M. BEALS, EMPLOYEE	CLAIMANT
MILLIGAN RACING (ALLEN MILLIGAN), EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE CORPORATION, INSURANCE CARRIER	RESPONDENT
LIBERTY MUTUAL GROUP, THIRD PARTY ADMINSTRATOR (TPA)	RESPONDENT

OPINION FILED APRIL 19, 2023

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK in Hot Springs, Garland County, Arkansas.

Claimant represented by Ms. Evelyn E. Brooks, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

On January 20, 2023, the above-captioned claim came on for a hearing in Hot Springs, Arkansas. A pre-hearing telephone conference was conducted in the above-styled claim on September 27, 2022, from which a Pre-hearing Order was filed on that same day. A copy of said order and the parties' responsive filings have been marked as Commission's Exhibit 1 and made a part of the record without objection.

Stipulations

During the pre-hearing telephone conference, and/or hearing the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. That the employee-employer-carrier relationship existed at all relevant times including on or about April 16, 2022, when the Claimant alleges to have sustained a compensable injury to her neck.
3. The Claimant's average weekly wage on April 16, 2022, was \$600.00.¹
4. The Respondents have controverted this claim in its entirety.
5. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act, including but not limited to the Claimant's alleged injuries to her shoulder, right elbow, and right knee.

Issues

By agreement of the parties, the issues to be litigated at the hearing included the following:

1. Whether the Claimant sustained a compensable injury to her neck on April 16, 2022.
2. Whether the Claimant's average weekly wage on April 16, 2022, was \$600.00, or was she a seasonal worker. (This issue has been rendered moot and not addressed in this Opinion because following the hearing, the parties stipulated that the Claimant's average weekly wage was \$600.00).
3. Whether the Claimant is entitled to temporary total disability compensation from May 13, 2022, through January 12, 2023.
4. Whether the Claimant is entitled to the medical benefits of record relating to her

¹After the hearing, the parties agreed to stipulate to an average weekly wage of \$600.00.

neck condition; and future medical treatment as recommended by her treating physician, Dr. John Pace.

5. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

Contentions

The respective contentions of the parties are as follows:

Claimant:

At the beginning of the hearing, the Claimant's attorney modified her contentions to state, in relevant part: That the Claimant had a compensable injury to various body parts but specifically today only her alleged neck condition and associate benefits of temporary total disability benefits and medical treatment for that condition will be litigated at this time.

Respondents:

At the beginning of the hearing, the Respondents' attorney modified their contentions to contend in relevant that the Claimant did not injure her neck on April 16, 2022, and that she has not been temporarily disabled for any period of time.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.

3. The Claimant proved by a preponderance of the evidence that she sustained a compensable injury to her neck on April 16, 2022, which resolved no later than April 21, 2022.
4. The Claimant failed to prove by a preponderance of the evidence her entitlement to any temporary total disability compensation.
5. The Claimant proved by a preponderance of the evidence that the medical treatment she received on April 18 and 21, 2022 was reasonable and necessary treatment for her compensable neck injury. However, the Claimant failed to prove her need for any future medical treatment for her neck injury.
6. The issue pertaining to a controverted attorney's fee has now been rendered moot because no indemnity benefits have been awarded on this claim.
7. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Summary of Evidence

Mrs. Lyna M. Beals (referred to herein as the "Claimant"), and her husband, Mr. Thomas James Beals, testified during the hearing.

The record consists of the January 20, 2023 hearing transcript and the following exhibits: Specifically, Commission's Exhibit 1 includes the Commission's Prehearing Order filed on September 27, 2022 and the parties' responsive filings; Claimant's Medical Exhibit consisting of forty-five numbered pages was marked Claimant's Exhibit 1; Claimant's Exhibit No. 2 encompasses a Non-Medical Exhibit and is made up of nine numbered pages; Claimant's Exhibit 3 is a Video of the Incident on April 16, 2022, which is retained in the Commission's file; and

Respondents' Non-Medical Documentary Exhibit includes four pages and it has been marked as Respondents' Exhibit 1.

Although there was some discussion of the possibility of the Respondents taking the depositions of two potential witnesses, namely, Allen Milligan, and his wife, Jeanette Milligan; however, counsel for the Respondents has decided not to take these depositions. Also, the Claimant was given additional time to submit her tax records, but the necessity for the submission of these records was rendered moot because the parties have now agreed to an average weekly wage for the Claimant.

Testimony

The Claimant/Lyna M. Beals

The Claimant was forty-nine years old at the time of the hearing. She confirmed that in July 2021, she was hired to work for Mr. Allen Milligan, the owner of Milligan Racing, a horse racing company. She testified that Mr. Milligan is a horse trainer. According to the Claimant, at the time of hire, her job title was groom. She explained that she had previously worked for both Mr. Milligan and his wife approximately five years ago. The Claimant essentially testified that she worked as a full-time employee of Mr. Milligan during the horse racing season at Oaklawn Park, in Hot Springs. According to the Claimant, once the season ended, she continued working for Mr. Milligan at his farm in Royal, Arkansas. She further testified that Mr. Milligan rents a farm after the season ends, because it is hard to find a facility in the surrounding area of Oaklawn Park. According to the Claimant, Mr. Milligan has rented the farm for the past two years. She confirmed that she continued to work for Mr. Milligan until May 12, 2022. Per the Claimant, she had no prior plans to end her employment with Mr. Milligan.

According to the Claimant, she also worked for Mr. Milligan's wife, Mrs. Jeanette Milligan, cleaning her office every other week. The Claimant testified that his wife runs the HPBA, which is the medical center at Oaklawn.

The Claimant's attorney asked her to explain her employment duties with Milligan Racing that she had over a period of time before April 16, 2022. Specifically, the Claimant basically testified that she was promoted to the position of assistant horse trainer, but she did not have a license. According to the Claimant, she ran the entire "barn" and farm for Mr. Milligan. The Claimant testified that they called it a "barn," but it is an out stable there at Oaklawn. According to the Claimant, her employment duties for Mr. Milligan included managing the other employees, payroll functions, the hiring and firing of employees, and various other responsibilities. The Claimant testified that they had hot walkers, and these workers were seasonal employees. Per the Claimant, the seasonal people worked during the horse racing season at Oaklawn, which was from December until May. However, the Claimant was a full-time employee of Mr. Milligan and worked year-round for him. According to the Claimant, Mr. Milligan paid her in cash.

The Claimant testified that her husband also worked for Mr. Milligan. She testified that she never traveled out of state, but she did go to Lone Star Park last year. Per the Claimant, she won a race for Mr. Milligan. She testified that at Lone Star, she worked as a groom and went there for two weeks to help Mr. Milligan get set up. The Claimant stated that she and her husband both hauled horses for Mr. Milligan to Louisiana. She essentially stated that they did a lot more work than just work during the "live meet" at Oaklawn. According to the Claimant, they performed several tasks for Mr. Milligan outside of that time frame.

Next, the Claimant was shown a copy of Claimant's Non-Medical Exhibit on page 1, which is a payroll sheet of some her earnings from December 3, 2021, through May 13, 2022. She

confirmed having previously seen this payroll record. However, the Claimant explained this document does not show all her earnings. Even though the Claimant gave extensive testimony regarding her pay arrangement with Mr. Milligan, the majority of this testimony has been omitted since the parties have now agreed that the Claimant's average weekly wage on the day of her injury was \$600.00.

Regarding the Claimant's April 16, 2022, work-related injury, she essentially testified that while in stall eight, she was struck by a horse during a paddock event. According to the Claimant, she and Mr. Milligan had the horses in a huge area so they could circle around. During this event, bystanders are given the opportunity to view the horses and check them out before placing their bets. Specifically, the Claimant testified that this particular horse had never been in a paddock before participating in a live race. She essentially stated that the horse was what they call a "first-time starter;" and as a result the horse was very nervous and making various movements. Therefore, Mr. Milligan told the groom to take the horse and walk her a few laps.

Specifically, the Claimant testified regarding her accidental injury of April 16, 2022:

...I was at her right front leg area and the horse just reared up, lunged forward, and I was right in her line of fire on the front right of her arm. And all I know is I went flying past the nine hole all the way to the - - almost to the wall where the people were, and when I landed, I landed on my right shoulder and I hit my right side of my head on the cement, and I landed on my right knee, as well. That was the last part - -- the body part that fell. But when I came to, I sat up and I could not get up. Allen Milligan had to walk over, because I was just in a daze, and he had to help me up because I just -- I didn't -- I was, you know, I was just confused at what was going on. It happened so fast...

The Claimant testified that she was in shock because she had never been hit that hard before by a horse during her ten years of working with them. According to the Claimant, immediately after the incident, her left side and wrist were hurting. She also was sore, and her right collarbone area hurt the most. They gave the Claimant ice packs and she was told by her boss, Mr. Milligan, to take it easy.

She admitted that she has watched the video offered into evidence, which shows the April 16, 2022, incident of her being struck by the horse. Per the Claimant, the angle of the video is not very good. My review of the surveillance video confirms the same.

The Claimant agreed that there are also some photographs admitted into evidence as part of Claimant's non-medical exhibit on pages 9, 12, and 13. She was allowed to peruse the pictures. The Claimant stated that the picture on page 9 depicts her back, the left of her lower back. However, the Claimant's attorney requested that the photo of the Claimant's back be removed since it does not relate to the current. She confirmed that the photograph on page 12 depicts the right side of her neck. Per the Claimant, her neck was inflamed and the EMT looked at it and felt the swelling. The Claimant agreed that the picture shows what her neck looked like on the night of April 16, 2022. She confirmed that her husband took the pictures. On the next page at 13, the Claimant testified that this picture shows the right side of her neck. The Claimant testified that when she got home on the night of the accident, her neck was "really stiff."

In response to being asked if she ever had problems with her neck prior to this accident, the Claimant replied, "No, never. Never." The Claimant confirmed that she returned to work the next day. However, the Claimant maintained that she was "really useless" because she was hobbling around and felt like she had aged twenty years. She admitted that on the day of the incident, she did not ask to go to a doctor at that point. The Claimant confirmed that she worked

with Mr. Milligan upon her return to work the following day, but she did not ask him if she could see a doctor at that point. However, according to the Claimant, Mr. Milligan told her to contact Jeannette Milligan (his wife) and talk with her about the claim because he was party to this claim.

The Claimant testified that she sent Jeanette a text because she was several buildings away from her. In this text message, the Claimant testified that she asked Jeanette Milligan for medical treatment. She further testified that Mrs. Milligan gave her the contact information for her to go to Sherwood Urgent Care, in Hot Springs. According to the Claimant, she needed a claim number in order for her to be seen at the clinic. However, the Claimant testified that Ms. Milligan did not provide her with the claim information until April 18. As a result, that was the first day the Claimant received medical treatment. The Claimant testified that the medical staff at Sherwood Urgent Clinic took X-rays and prescribed her some muscle relaxers. She denied that they ordered physical therapy for her at that time.

Ultimately, the Claimant did undergo some physical therapy treatment. However, she denied that the physical therapy was very helpful in relieving her symptoms. According to the Claimant, she was given some “dry needle shots.” However, the Claimant maintained that the medical staff person did not note this treatment in her medical records. Per the Claimant, they only notated when she was late for her appointments. She testified that she was late because she was in a lot of pain and had difficulty getting to sleep.

Specifically, the Claimant explained how her physical therapy came to an end:

A: I called one day and said I was running late, and I say, “I’m five (5) minutes away,” and she “Oh, don’t bother.” So, Sonya [phonetic], the receptionist, you know, we had a good rapport every time we’d come in, but she just seemed really

rude on the phone, and she said, ‘We’ll get a medical staff to call you back. Don’t come in until we call you.’”

The Claimant confirmed that she had problems attending her physical therapy sessions at times. She attributed her failure to attend these appointments to the increased pain she experienced because of the physical therapy exercises that she could not complete the way they wanted her to, such as with the arm machine. According to the Claimant, she would compensate her left arm because her left arm was stronger than her right arm. After they ended her physical therapy, the Claimant sought treatment on her own. According to the Claimant, she obtained an MRI for her neck because she believed something was severely wrong with it. She admitted that there is a gap in her treatment, from the time of her physical therapy treatment and the MRI being performed.

While treating at Sherwood Urgent Care, the Claimant was restricted to light duty, which included no pushing, pulling, bending, or squatting. Per the Claimant’s testimony, she was unable to perform her regular job as a groom, and nor was she able to perform employment duties as an assistant trainer for that matter. She testified that Jeanette and Allen Milligan told her to “just take it easy.” The Claimant confirmed that she continued to work for them during the time she was getting treatment at the urgent care clinic. In fact, she testified her workload increased.

According to the Claimant, once the meet ended, the horses were moved to other tracks. In this case, they were moved to Louisiana. Per the Claimant, since she lived there and was the assistant trainer, she had to cover everything when it came to cleaning out and gutting the stalls. The Claimant testified that she had to use wheelbarrows to clean twenty-five stalls. If they failed to do the cleaning, there was a deposit that her employer would lose. The Claimant further testified that everything had to be removed and taken to the farm. This clean-up included the removal of horse tack such as the saddles, bins, and the washing machine. According to the Claimant, she

used her husband's truck to move the equipment. She testified that she had six truckloads of heavy items that she was not supposed to be moving. The Claimant testified that she was doing this work around the time period of around May 11. She stated that the horses had been shipped and they had a week to be completely cleared out of Oaklawn Park.

As of the date of the hearing, the Claimant no longer worked for Mr. Milligan. The Claimant explained that on May 14, she was at the farm in Royal and her back was out due to all of the lifting (including the washing machine) and gutting of the stalls. According to the Claimant, these activities tore her back up to where it was completely out, along with her shoulder and neck. The Claimant testified that Mr. Milligan told Myrtle (a coworker) to have her jog one of the horses. However, the Claimant testified that once Myrtle saw her condition, she took the horse from her and jogged it.

The Claimant testified that she ended up hiring a guy by the name of Noah to work for her. She stated that she paid him \$200.00 out of her pay for him to cover for her a few days until she could recuperate. However, the Claimant essentially testified that Mr. Milligan became upset because this guy had been working for her and handling his horses. At that point, Mr. Milligan called the Claimant when she was at the farm and told her, he did not want the guy there and for her not to come back to work until she was 100% better. The Claimant testified that she gathered her tack and everything that she had and left the farm. Her testimony indicates that this was the last time she worked for Mr. Milligan.

She confirmed that she has worked elsewhere since her employment with Mr. Milligan ended. However, the Claimant explained that she is unable to do what she set out to do, which was be a groom. According to the Claimant, she has been downgraded to what they call a "hot walker" because she has numbness of the fingers on both hands and sharp pains.

The Claimant confirmed that as of the date of the hearing, she works for another employer. Specifically, the Claimant testified that her friend told her about a job as a hot walker and she started that position last Friday. Per the Claimant, her current job is a part-time position, and she works with “mild horses.” Her current pay is \$250.00 a week in cash. She works four hours a day, seven days a week. According to the Claimant, this is her first job since leaving her employment with Mr. Milligan.

Regarding the numbness in the hands, which she previously mentioned, the Claimant testified that these symptoms have progressed over the months. According to the Claimant, while undergoing physical therapy, she had upper body collarbone area issues. The Claimant testified that two months after she stopped the physical therapy, she began having sharp pains, which started in her thumb and index finger on both hands. As a result, the Claimant went to urgent care. The Claimant sought treatment from FirstCare Walk-in Clinic, in Hot Springs. However, according to the Claimant, they wanted a referral from Sherwood Urgent Care, so she had to go back there for a referral to do an MRI. The Claimant testified that the nurse at the Sherwood clinic called Jeannette Milligan, and she told the nurse that the Claimant no longer worked for them, and she was unsure if her treatment would be covered. The Claimant agreed that she did not seek medical treatment or the MRI at that time because Liberty Mutual would not cover it. Her MRI was not performed until November 2022 although in June 2022 Sherwood Urgent Care recommended that she have an MRI. The Claimant agreed that she was not able to see a doctor before she went to the urgent care referred her for the MRI. The Claimant testified that she did not see any other doctor except for Dr. Pace, after the MRI results.

She testified that the symptoms in her neck have worsened since the accident occurred. According to the Claimant, Dr. Pace has performed two injections on her neck. However, the

Claimant testified that her neck is stiff all the time. She stated that she does not have full mobility and is not the same. According to the Claimant, she never had any problems, or numbness in her hands and arms, but now she constantly has tingling. The Claimant testified that although the pain is still there, the injections helped with the numbness in her hands because they were completely numb prior to the injections.

On cross-examination, the Claimant denied that she hired for the job with Mr. Milligan just for the Oaklawn meet. However, the Claimant testified that other workers were hired solely for this purpose. She confirmed that Janette Milligan paid her \$75.00 for the two offices she cleaned for her at HPBA. The Claimant testified that Jeanette Milligan paid her \$150.00 every two weeks, with a company check. The Claimant admitted that she did not bring those deposit slips to the hearing. She explained that HPBA is the Horsemen's Association. The Claimant testified that HPBA is Janette Milligan's employer. She denied that HPBA is part of Milligan Racing.

Subsequently, the Claimant testified regarding her alleged injuries, in particular her neck condition:

Q: Okay. Now when this claim first came up, we filed our various filings and you initially said you hurt your shoulder, your right elbow, and your right knee.

A: Yes, sir.

Q: Why didn't you say neck?

A: My collarbone is my neck, sir.

Q: You're saying it's your collarbone?

A: I hurt everything on my right side.

Counsel for the Respondents asked the Claimant about the MRI which shows "a small bulging disc" of her cervical spine. She maintained that her collarbone was hurt the day of the incident. The Claimant was asked about objective medical findings demonstrating something was

wrong with her collarbone and she stated that the EMT saw her collarbone. She admitted that she continued to work after her accident, but denied she was at 100%. The Claimant confirmed she was injured on May 11 as shown in an entry on page 14 of her medical exhibit, which indicates she reinjured her right shoulder and neck. However, the Claimant next maintained that the wording is incorrect when they say “reinjuring.” The Claimant testified that it is the same initial injury from the accident she sustained on April 16, 2022.

The Claimant admitted that she was released to go back to work. She confirmed that she sent a text to her employer on April 18 stating that she went to the clinic yesterday to get released and they said she needed a CAT scan first. The Claimant confirmed that she underwent the CAT scan. She admitted to further writing in the text message, “CT scan results are good, just got the results.” The Claimant also admitted to writing in that same text message exchange that they could see her tomorrow anytime at Sherwood Urgent Care to get her released for work.

Specifically, the Claimant explained:

Q: So, at that point and time you’re fine, and your CAT scan didn’t show anything; is that right?

A: No. the CAT scan, I guess, did not show my C5 and 6. I’m not a doctor but ...

Next, the Claimant was asked if following this April 16, 2022, incident, she had a test showing something wrong with her neck, and she replied: “There’s everything wrong with my neck.” Although it was not until after May 11, when the Claimant had the second incident, there is an MRI showing the bulging disc, the Claimant continued to maintain it is the same injury. However, the Claimant was unable to explain why the doctor said she was “reinjured,” but stated this was not correct.

Even though the Claimant continued working at the farm after May 11, she testified she was in “really poor shape” because of the six truckloads of things she had moved for Mr. Milligan. According to the Claimant, there is a lot involved in clearing out Oaklawn once the meet ends. She stated that she had to do the cleanup to move to the farm and resume working the very next day. The Claimant testified that she had to clear everything out of Oaklawn and put it all in Mr. Milligan’s facility at the farm in Royal that he had been renting for over two years.

She confirmed that Mr. Milligan telephoned her on May 14, and told her not to come back unless she was 100%. However, the Claimant testified she never got the release to return to work. According to the Claimant, between May and January she was recuperating because she was unable to do anything. She testified she had to go to a lower paying job, which is very minimal work compared to a grooming position. The Claimant confirmed that she told her current employer about her condition. Per the Claimant, she currently works as a hot walker, which entails walking a horse in circles. She testified that there is no extra work or lifting a horse’s leg like she used to do. The Claimant denied that the horses she works with tend to jerk and rear up. She testified that the horses at this barn are “really tamed horses,” in comparison to those at other barns.

Prior to horse racing type work, the Claimant testified that she could type seventy-five words a minute and once worked at a Revenue Office. However, she testified that she is unable to type due to the neuropathy in her hands. The Claimant has a GED. She confirmed that she previously worked at the Department of Motor Vehicles in Norfolk, Virginia.

On redirect-examination, the Claimant testified that she complained of neck pain right after the accident when she went in to see the doctor. She confirmed that she continued to complain of neck pain during the entire time she was being treated at Sherwood Urgent Care. The Claimant

admitted that the epidural steroid injections done by Dr. Pace helped with the numbness and the pain, but she denied that she is 100%. She has not been released to return to work.

Thomas James Beals

The Claimant's husband, Mr. Thomas Beals, was called as a witness to testify on behalf of his wife. Mr. Beals confirmed that he is associated with the Claimant by marriage. The couple has been married for three years. Mr. Beals confirmed that he has knowledge of where his wife was working from 2021 and the beginning part of 2022. He confirmed that they both were working for Allen Milligan at that time. Mr. Beals testified that he worked as an assistant trainer. According to Mr. Beals, the Claimant had worked for Mr. Milligan off and on for years and years. Mr. Beals explained that in 2022 the Claimant worked full time for Mr. Milligan except for the two months that they took off. The couple went to Texas with Mr. Milligan for two weeks to help them get set-up there. According to Mr. Beals, Mr. Milligan told them not to get a job because he was coming back to Hot Springs, which he did do in July. Mr. Beals testified that they went back to work for Mr. Milligan out at the farm on Sunshine. However, not long after that Mr. Beals went to work for another barn. He testified that the Claimant stayed and worked full time and worked all the way through the meet until she got hurt in May.

He testified that the Claimant stayed working full-time with Allen (Milligan) all the way through the season and until when she got hurt, which was in May (2022). According to Mr. Beals, the Claimant worked for Mr. Milligan for ten months when they returned to Hot Springs in July, which was during season 2021. Mr. Beals testified that the Claimant made \$600.00 a week while working for Mr. Milligan.

On cross-examination, Mr. Beals confirmed that he testified that the Claimant worked until she got hurt in May. In relevant part, Mr. Beals clarified:

Q: And in May was when she was unloading the truck?

A: Well, when she got hurt at the races, I guess that was in April, and then, you know, she was on light-duty. And when they shipped out, they left her to just load everything up and take it to the farm, and that was at the end of May. She borrowed my truck, and she made a couple of loads before I got free and once I got over there -- because I had her Durango, and once I got there, I helped her with several loads after, you know, I got back and started helping her. But it was everything from gates, to rakes, to pitchforks, wheelbarrows, refrigerators, washer, dryer. There was -- I mean, they just took what was needed for the horses they left with, and they jetted out of town. And she had hired a couple of other people to help her load up and everything, which was out of our pocket, and then they left when I got there and me and her finished the rest of the loads.

Mr. Beals confirmed that the Claimant “reinjured” herself as the medical report states. Per this report, on May 11, 2022, the Claimant reinjured her right shoulder and neck loading a truck. He testified that she reinjured her right shoulder and neck while loading a truck.

Moreover, Mr. Beals specifically testified, in relevant part regarding the Claimant’s condition after the May 11 incident, “...She was in pain immensely. Honestly, you know, personally I don’t think she should been doin’ all that but, I mean, yes, she did hurt herself again...”

Under further questioning, Mr. Beals confirmed that after the Claimant injured herself for the second time in May, she stopped working for Mr. Milligan. He testified that the Claimant was in tears and a lot of pain. According to Mr. Beals, the Claimant told Mr. Milligan about what had happened, and she let him know that she was hurting worse. Mr. Beals testified that the Claimant was supposed to go directly out to the training center to work, but she could not do that and could hardly walk.

However, Mr. Beals testified that Mr. Milligan told the Claimant to handle everything. Since she was unable to work, she got a man to come to work for her until she could feel better. Mr. Beals essentially testified that Mr. Milligan became furious and was ranting and raving because the Claimant had someone he did not know in the shed row. He testified that Mr. Milligan told the Claimant she could not come back to work until she was 100%. According to Mr. Beals, he was with the Claimant when she got the phone call from Mr. Milligan.

Mr. Beals testified that the Oaklawn horse racing season runs from December 9 until May 15. He confirmed that the Claimant worked at Oaklawn during the 2021 season. Mr. Beals further testified that the Claimant was there from 2021 until 2022, which cuts into the next year.

On redirect examination, Mr. Beals confirmed the Claimant was on light duty, at the point when she was cleaning out the stalls. He confirmed that when the Claimant got hurt in the paddock during the incident with the horse, she had problems with her neck and shoulder. Mr. Beals stated that he took all kinds of pictures of the Claimant's knee and elbows that night. He agreed that the Claimant's neck and shoulder continued to bother her while she was working on light duty. Mr. Beals testified that for the first couple of days, the Claimant was stiff and could hardly move. He denied that the Claimant ever got completely better while working on light duty. According to Mr. Beals, the Claimant worked as a groom and assistant trainer for Mr. Milligan.

I specifically questioned Mr. Beals concerning this May 11 incident. Mr. Beals testified that the incident occurred when the two of them were loading the truck. According to Mr. Beals, they were picking up a washer or dryer, and when they picked it up, "she just gave out." Mr. Beals testified that he asked the Claimant "What's wrong?" And the Claimant replied, "I hurt myself again." He finished loading the truck and when Mr. Beals got in the truck, the Claimant was

holding her neck and shoulder. Mr. Beals essentially testified that he could tell the Claimant was in pain, so he did not ask her any questions.

On further recross-examination, Mr. Beals maintained that the Claimant got hurt in April and then in May, she hurt herself even more. However, he essentially confirmed that after the May 11 incident, the Claimant stopped working.

Mr. Beals admitted on further redirect examination that the Claimant had not been complying with her light duty restrictions before the May 11 incident. He testified that Mr. Milligan still had the Claimant grooming and she had been walking around stiff and in tears before May. Mr. Beals testified that other grooms were taking horses from the Claimant because she was unable to do the work. However, Mr. Beals admitted that this occurred before the Claimant's job ended in May.

Medical Evidence

On April 18, 2022, the Claimant sought treatment for pain from the Sherwood Urgent Care Clinic, in Hot Springs. There, the Claimant came under the care of Pamela Speed, NP (nurse practitioner). At that time, the Claimant complained of shoulder and neck pain. The Claimant reported a history of having been injured on the Saturday while working with horses at the racetrack. Specifically, the Claimant stated that she was pushed over striking her right shoulder and her neck was hurting. The Claimant reported that most of her symptoms were on the right cervical side. Additionally, the Claimant stated that she had muscle aches, muscle pain, and muscle spasms. On physical examination, Nurse Speed noted that the Claimant had mild neck spasm, along with anterior neck bilateral pain. Nurse Speed diagnosed the Claimant with among other things, "Cervicalgia, Illness, Acute," for which she prescribed a medication regime which included a Medrol Pak 4mg in a dose pack, and Robaxin. Speed authored an Excuse for Work on

that same day. She released the Claimant to restricted/accommodated duty. Her restrictions included limited standing, sitting, and walking along with a ten-pound lifting restriction to her right hand.

The Claimant sought follow-up care from Sherwood Urgent Care on April 21, 2022, due to pain in her neck, among other bodily parts. She stated that she was kicked by a horse on the left side, but this caused her to fall, and she landed on her right side, striking her head on the ground. The Claimant reported she “hit her head on a concrete floor” when she fell. She reported that she started having dizziness, headache, and nausea after leaving the clinic. However, the Claimant specifically reported that her symptoms were now better. Her shoulder pain, and right back pain were now resolved, and her ROM in her neck was normal. Although the Claimant reported her symptoms had resolved, a CT of the head was ordered due to a diagnosis of concussion without loss of consciousness. Medical staff instructed the Claimant to return to the clinic for follow-up care after the imaging was completed.

Subsequently, on June 14, 2022, the Claimant returned to Sherwood Urgent Care for additional medical care. The nurse practitioner, Robyn Chreene, wrote that the Claimant had an injury at work on April 18 [sic], 2022 and was seen there at the clinic. Per these medical notes, the Claimant had a CT of the head performed on April 26, 2022, and received the results on April 28, 2022. The nurse practitioner noted that the Claimant was told to come back for clearance to return to work, but she never returned. At that time, the Claimant reported that her employer refused to return her to work until she was 100%, but she does not feel 100%. The Claimant stated that she did not know what to do and wanted to know what she should do given her condition. She reported that she continued to have right-sided neck pain from the initial injury although her X-rays of the C-spine were normal. But the Claimant denied numbness or tingling or any radiation

of pain down her arm. At that time, the Claimant reported that she hurt her back in a separate incident on May 11, 2022, lifting something. They ordered physical therapy and noted that they would move forward with an MRI of the neck and shoulder if the Claimant did not improve with therapy. Although Nurse Chreene continued the Claimant on light duty, she stated that she did not feel the Claimant needed to be placed completely off work. On physical examination, the Claimant's ROM was noted to be normal in her neck as well as her shoulder with no radiculopathy symptoms. Specifically, Speed wrote, "Low suspicion for rotator cuff injury or cervical nerve root impingement from work injury."

On June 28, 2022, the Claimant presented for follow-up care on her neck and back pain under the care of Robyn Chreene, NP. She reported that she had her first physical therapy appointment on July 7, 2022. The Claimant had not returned to work. She stated that the muscle relaxers caused her to be nauseated. Therefore, she had been using ice or heat to the affected area. Per these clinical notes, Nurse Chreene called the Claimant's boss to get clarification on the availability of light duty work and due to her boss stating she had to be a 100% before returning to work. Specifically, the nurse practitioner wrote, "At the last visit the patient stated she was injured at work on 5/11 as well as reinjuring her right shoulder and neck. Discussed with patient that her boss states she was no longer employed with them and that she was unsure if this was still covered with workers [sic] comp as she was not an employee." The nurse practitioner instructed the Claimant to alternate ice and heat to her shoulder; continue with anti-inflammatory; attend physical therapy as needed; and to follow-up as needed.

The Claimant underwent evaluation for physical therapy on July 7, 2022, at Levi Hospital. Dalton Steele PT, DPT, Cert. DN authored a Physical Therapy Initial Evaluation physical therapy note. Physical Therapist Steele noted that the Claimant presented to the therapy clinic with

complaints of right shoulder pain following a work-related accident. In particular, the Claimant reported she was kicked by a horse in mid-April. She stated that she was kicked on the left side and fell onto the concrete on her right side. Of significance, the Claimant stated that she sought treatment from Sherwood Urgent Care and was told she suffered a concussion. She reported that her concussion symptoms resolved but she has been having a lot of pain and difficulty with her right shoulder. The Claimant stated she believed she needed an MRI for her shoulder due to sharp and burning pain in her shoulder that does not seem to go away.

An MRI of the Claimant's cervical spine was performed on November 16, 2022, with an impression of "At C5-6 there is moderate right neural foraminal stenosis nerve impingement. Multilevel degenerative disc and facet changes."

William James, CRNA, for Dr. John Pace evaluated the Claimant on December 19, 2022. At that time, the Claimant reported joint pain, muscle pain, muscle cramps, neck pain, middle back pain, muscle stiffness and lower back pain. On physical examination, the Claimant was noted to have cervical spine stiffness and decreased ROM, along with thoracic tenderness among symptoms related to the lumbar spine. James performed a right C5/6 epidural steroid injection.

The last medical record is from January 3, 2023. The Claimant was seen at the office of Dr. John Pace under the care of James, CRNA. At that time, the Claimant was assessed with "Radiculopathy, cervical region." She continued with the symptoms noted above. However, the Claimant reported improvement with paresthesia in her fingers since the right ESI on the right C5-6, which was performed on December 19, 2022.

The non-medical exhibits include an Oaklawn Accident Report, which was authored by Patrick Bradbury, EMTB. It reads, in relevant part:

Description of Accident: EMS was sitting in the paddock watching the 3rd race when the #8 horse Chaos Magic reared up and caused the patient to slam onto the ground injuring her elbow and head. EMS checked her out and gave her two cold compresses. She [the Claimant] declined an ambulance and signed an AMA.

Additionally, I have reviewed a copy of the video surveillance of the April 16, 2022, incident. Although the incident was somewhat captured on video, it does not show a direct view of the incident. However, it does show that there was some kind of commotion in one of the stalls with a horse rearing up.

Adjudication

Compensability

The Claimant has asserted a compensable neck injury on April 16, 2022, while working for the respondent-employer.

"Compensable injury" means an accidental injury causing physical harm to the body, arising out of and in the course of employment and which requires medical services or results in disability or death. Ark. Code Ann. § 11-9-102(4)(A)(i). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). The Claimant must prove by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. § 11-9-102(4) (E)(i).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the Claimant proved by a preponderance of the credible that she was injured on April 16, 2022, while working for Milligan Racing.

Here, it is undisputed that the Claimant was involved in a work-related accident on April 16, 2022. Specifically, the Claimant credibly testified that she was injured on April 16 while

working for Milligan Racing. Her testimony demonstrates that she was injured when a horse reared up and caused her to fall to the ground, landing on her right side. I found the Claimant's testimony to be credible in this regard and the incident took place in the presence of Mr. Milligan and several other people. The Claimant's testimony was corroborated by surveillance video of the incident, the EMT's report of injury, and the initial medical reports.

Although the Claimant initially declined medical treatment that day, she later requested medical attention and Mrs. Milligan referred her to the Sherwood Urgent Care Clinic, in Hot Springs. Medical records show that the Claimant was initially seen at the clinic on April 18, 2022, under the care of Pamela Speed, a nurse practitioner. According to this medical note, the Claimant complained of pain in her shoulder and neck. X-rays performed of the Claimant's cervical spine were normal and did not show any fractures or broken bones. The Claimant was physically examined by the nurse practitioner. Based on her physical examination of the Claimant, the nurse practitioner opined, among other things, that the Claimant's neck had "mild neck spasm," for which she ordered a medication regimen that included a muscle relaxant, Robaxin. Hence, this finding of "mild neck spasm" establishes an injury to the Claimant's neck by medical evidence supported by objective findings. The Claimant was diagnosed as having "Cervicalgia, (m54-2) – Illness, Acute," and placed on restricted work duty.

Therefore, based on all of the foregoing, I find that the Claimant has met all of the requirements for establishing a compensable injury to her neck. Thus, I therefore find that the Claimant proved by a preponderance of the evidence that she sustained a compensable injury to her neck on April 16, 2022, during and in the course of her employment with the respondent-employer/Milligan Racing.

I recognize the Claimant underwent an MRI of the cervical spine on November 16, 2022, which revealed that at “C5-6 there is moderate right neural foraminal stenosis nerve impingement.” However, I am not persuaded that these findings are related to the Claimant’s April 16, 2022, work-related injury due to the following reasons: Specifically, on April 18, X-rays of the Claimant’s cervical spine were normal. It was not until after the May 11, 2022, work-related incident that the cervical spine abnormalities were revealed. Here, both the Claimant and her husband credibly testified that she was “reinjured” in May. The Claimant returned to Sherwood Urgent Care on April 21 and stated her symptoms had resolved and the ROM in her neck was normal. At that time, medical staff instructed the Claimant to return for a follow-up visit to the Sherwood Urgent Care Clinic to get clearance to return to work. However, the Claimant failed to return to the clinic as directed to obtain clearance to return to work. More importantly, the Claimant did not seek further medical treatment/follow-up care until after the May 11 lifting incident. Hence, the Claimant continued working her regular full-time and even more laborious employment duties for Milligan Racing after the April 16 incident and did not stop working until after the second incident in May.

B. Medical Benefits

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a).

The Claimant proved that the treatment of record that she received for her neck injury during the April 18 and 21, 2022 visits to Sherwood Urgent Care were reasonably necessary treatment for diagnosing and evaluating her compensable neck injury of April 16, 2022. On April 21, the Claimant returned to the clinic for follow-up care and indicated her symptoms had resolved

and the ROM in her neck was normal. At that time, they directed the Claimant to return for a follow-up visit for clearance to return to work. However, the Claimant became non-compliant and failed to return for a follow-up visit to get clearance to return to full duty work. Moreover, no doctor has recommended any further treatment for the Claimant's neck injury of April 16, 2022. Hence, the Claimant did not seek additional treatment for her neck until after the second incident, which occurred on May 11.

Based on the foregoing, I find the Claimant failed to prove her entitlement to any further treatment for her neck injury, including the care recommended by Dr. John Pace.

I recognize that it is well-established in workers' compensation law that a Claimant may be entitled to ongoing medical treatment after the healing period has ended. However, I do not find that to be the case in this instance.

Therefore, I find that the Respondents are liable for the aforementioned medical treatment of record, namely, the two visits to Sherwood Urgent Care on April 18, and April 21, 2022.

C. Temporary Total Disability Compensation

Here, the Claimant contends that she is entitled to temporary total disability benefits for her neck injury of April 16, 2022, beginning on May 13, 2022, and continuing until January 13, 2023.

An injured employee for an unscheduled injury is entitled to temporary total disability compensation during the time that she is within her healing period and totally incapacitated from earning wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit.

Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition, the healing period has ended. Id. Temporary total disability cannot be awarded after the Claimant's healing period has ended. Trader v. Single Source Transportation, Workers' Compensation Commission E507484 (February 12, 1999).

The Claimant failed to prove her entitlement to any temporary total disability for her compensable cervical injury of April 16, 2022, because she was never totally incapacitated from earning her regular wages.

Of significant importance is the fact that although the Claimant was placed on light duty following her April 16, 2022, work-related neck injury, the Claimant admitted that she continued working for Mr. Milligan, performing her regular duties, and receiving her regular pay until her employment ended with him in May 2022. At that point, according to the Claimant's testimony and that of her husband, she was injured a second time while moving a fridge or dryer. However, this injury is not a claim presently before the Commission.

Moreover, I find that the Claimant's healing period for her neck injury ended no later than April 21, 2022. At that point, the Claimant reported to the medical staff at the urgent care clinic that her symptoms had resolved. In addition to this, the Claimant failed to return to the clinic for a follow-up visit to get clearance for work as instructed. Hence, the Claimant failed to meet the requirements of the waiting period under Ark. Code Ann. §11-9-501(a); AWCC Rule 099.09.

Accordingly, I find that the Claimant failed to prove her entitlement to any temporary total disability compensation for her cervical spine injury of April 16, 2022.

In light of the foregoing, the issue relating to a controverted attorney's fee has been rendered moot and discussed in this Opinion.

AWARD

The Claimant proved that she sustained a compensable injury to her cervical spine on April 16, 2022. Also, the Claimant proved her entitlement to the medical treatment of record that she received on April 18 and 21, 2022 her compensable neck injury of April 16, 2022. However, the Claimant failed to prove her entitlement to any temporary total disability compensation.

Therefore, the issue relating to a controverted attorney's fee has been rendered moot and not addressed in this Opinion.

All issues not litigated herein are reserved under the Act.

IT IS SO ORDERED.

CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE